



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON, D.C. 20370-5100

HD:hd

Docket No: 05653-00

18 October 2000

LT [REDACTED] MC USN
[REDACTED]
[REDACTED]

Dear Lieutenant [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

You requested that your date of rank be changed from 7 December 1994 to 1 July 1994. Your further request, to be selected for lieutenant commander, was not considered, as the Board for Correction of Naval Records does not usurp the function of a duly constituted officer promotion selection board. However, the Board did consider whether there had been any error or injustice in your not having been considered for promotion.

A three-member panel of the Board, sitting in executive session, considered your application on 13 October 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Navy Personnel Command dated 13 September 2000, a copy of which is attached. The Board also considered your letter dated 30 September 2000 with enclosures.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice in your date of rank or your not having been considered for promotion. In this connection, the Board substantially concurred with the comments contained in the advisory opinion.

The information you provided in your letter of 30 September 2000 did not persuade the Board you were not an interservice transfer. Concerning your not having been considered for promotion, they observed that your orders to active duty did not state you "may" be "automatically deferred" from promotion consideration; rather, the orders stated you "will be automatically deferred" if your placement on the active duty list rendered you eligible for

consideration in-zone or above-zone for a promotion board within one year of entering active duty. The word "may" appears in the sentence stating that placement on the active duty list "may" have rendered the member eligible for a promotion board within one year of entering on active duty. While the Board recognized you may have misinterpreted the orders to mean you would be promoted after one year of active duty, they found the orders were sufficiently clear to convey the correct meaning. Finally, they were unable to find the two other orthopaedic surgeons you named were eligible for deferment of promotion consideration.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

5683-00



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

5420
PERS-85
13 Sep 00

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: [REDACTED] MC, USA [REDACTED]

Encl: (1) BCNR File

1. Enclosure (1) is returned, recommending disapproval of [REDACTED] request for selection to Lieutenant Commander.
2. [REDACTED] came on active duty with the U.S. Navy on 1 July 1999 with a date of rank for Lieutenant of 7 December 1994. His statement of service shows that he was an interservice transfer from the U.S. Air Force Reserve with an O-3 date of rank of 7 December 1994.
3. [REDACTED] was deferred from consideration by the FY-01 Active Lieutenant Commander Medical Corps Promotion Selection Board due to having less than one year of commissioned active duty time, per SECNAVINST 1420.1A. [REDACTED] initial commissioning orders contained guidance regarding automatic deferral within one year of entering active duty and additional guidance explaining that this deferral could be waived by the officer with a letter to PERS-85. No letter was received at this office from LT [REDACTED] requesting to waive his deferral.
4. Additionally, [REDACTED] would not have been eligible for the FY-00 Reserve Lieutenant Commander Promotion Selection Board; LT Vance came on active duty in July 1999 and the Reserve O-4 Staff Board convened on 13 September 1999. [REDACTED] will be considered for promotion before the FY-02 Active Duty Lieutenant Commander Medical Corps Promotion Selection Board.
5. Recommend disapproval of his request.

[REDACTED]

BCNR Liaison, Officer Promotions and
Enlisted Advancements Division